IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.697 OF 2006

National Insurance Co. Ltd. ...Appellant
Vs.
Smt Madhuben Amrutlal Patel & Ors. ...Respondents

Mr A.B. Barve for the Appellant.
None for the Respondents.

CORAM : A. S. OKA, J.
DATE : APRIL 18, 2006.

P.C.:

1. The challenge in this Appeal preferred by Insurance Company is to an Award made by a Motor Accident Claims Tribunal in a claim made under section 110-A of the Motor Vehicles Act, 1939. The Appeal is preferred for challenging the quantum of compensation awarded. There is nothing on record to show that any leave was granted by the Tribunal to the Appellant Insurance Company to defend the claim on behalf of the insured. No special defence appears to have been raised by the Appellant. As the insured is not the Appellant, the Appeal is not prima facie maintainable. Therefore, on 03rd April, 2006 when this Appeal was argued for admission, a query was made by me to the learned Advocate appearing for the Appellant as to how the Appeal preferred by the Appellant-Insurance Company was maintainable. On the request made by the

Advocate appearing for the Appellant time was granted till today to satisfy this Court that the Appeal which is preferred only at the instance of Insurance Company was maintainable. Time was sought on the ground that the Appellant Company has not made available necessary documents to the learned Advocate.

2. Today, the learned Advocate appearing for the Appellant submitted that the Appellant-Insurance Company could not get relevant documents from the record of the Tribunal as the advocate who used to appear for the Insurance Company in the concerned Tribunal has expired. She prays for one more adjournment. The learned Advocate appearing for the Appellant submitted that if time is not granted and if the appeal is dismissed, the Appellant-Insurance Company will be the sufferer as compensation amount will have to be paid by the Appellant-Insurance Company.

3. Considering the peculiar facts of the case, I am not inclined to grant adjournment. The Appeal arises out of a claim for compensation in a fatal accident which took place on 04th September, 1981.

The Claim Petition was filed in the year 1982. As the Advocate appearing for the claimants did not appear before the Tribunal, in the year 1999 the Claim Petition was dismissed for default. It is pertinent to note that from 1982 to 1999 i.e. for seventeen long years the Claim Petition remained pending with the Tribunal. The claimants are the widow, children and the mother of the deceased. The Claim Petition was restored in 2004 and was ultimately decided on 29th November, 2005. The learned Member of the Tribunal passed an award in the sum of Rs.3,74,000/-. The learned Member was conscious of the fact that for a long time the Claim Petition was not pending. Therefore, he has directed that interest at the rate of 9% will be payable on compensation amount from date of filing of the Claim Petition till the date on which Claim Petition was dismissed for default. He has further directed that further interest will be payable only from the date of restoration i.e. 01st June, 2004 and that is also at a lower rate of six per cent per annum.

4. The memorandum of the Appeal discloses that certified copy of the judgment and award was applied

for the Appellant-Company in time and the certified copy was received on 31st January, 2006. The Appeal is presented to this Court on 24th March, 2006. If the Appellant-Insurance Company was really serious about prosecuting the Appeal, the company should have applied for certified copies of other documents such as Roznama and written statement alongwith certified copies copy of the judgment and award. The certified copy of the judgment and award was received way back on 31st January, 2006. No attempt is made by the Insurance Company to apply for certified copies of the relevant documents from the record of the Tribunal till today. When a query was made by me today to the Advocate appearing for the Appellant as to whether any Application is made by the Appellant to the Tribunal for grant of certified copies of relevant documents, the learned Advocate for the Appellant stated that she has not received any instructions on this aspect from the Appellant-Insurance Company. The learned Advocate appearing for the Appellant stated that the Advocate who was appearing for the Appellant-National Insurance Company in the Claim Petition has expired and that is the reason for not getting the copies of the relevant documents. The said submission cannot be accepted for

the simple reason that the Appellant-Company has their regular panel advocates practicing in the same Tribunal and it is not the case that as on 29th November, 2005 there was only one panel Advocate who had expired. Nothing is placed on record to show what efforts were made from 03rd April, 2006 to 18th April, 2006 by the Appellant-Insurance Company to get copies of the relevant documents. In fact, before taking decision of preferring an Appeal, copies of all documents should have been obtained by the Appellant.

5. The position of law as regards maintainibility of Appeal at the instance of Insurance Company is very well settled. Before filing Appeal, the Appellant should have verified whether the Appeal was maintainable. The impugned judgment does not show that the Appellant Company had raised any special defence. On the contrary the judgment records that the Appellant-Company has admitted the existence of a valid contract of Insurance. The death in motor vehicle accident has taken place on 04th September, 1981. The award of the Accident Tribunal is passed on 29th November, 2005 i.e. nearly twenty-four years after the accident. In the meanwhile, the children of

the deceased who were minors have attained majority. No comment is necessary about the sad state of affairs. It must be noted here that while passing the award, the learned Member granted time of ninety days to the Insurance Company to deposit amount. In the award it is directed that if the amount is not deposited within a period of 90 days, additional interest at the rate of 6% shall be levied on the amount due from the date of restoration of the Claim Petition. It must be noted here that till today not a single farthing is deposited by the Appellant-Insurance Company in compliance with the award. Considering these peculiar facts of the case, request for grant of further time cannot be acceded to. The Appellant has not supplied necessary documents to its Advocate to show to this court that the Appeal is maintainable. Therefore, the Advocate is helpless and is not in a position to satisfy this court that the Appeal is maintainable. No other submission is made before me. Accordingly, First Appeal is dismissed for want of prosecution.

JUDGE